

relevance that the potential harm occasioned by the discovery would outweigh the ordinary presumption in favor of broad disclosure." *General Electric Capital Corp. v. Learn Corp.*, 215 F.R.D. 637, 640 (D. Kan. 2003) (emphasis added). The Supreme Court interprets relevancy in the discovery context "broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case." *Oppenheimer Fund, Inc., v. Sanders*, 98 S. Ct. 2380, 2389 (1978). Peterson has not met its burden. The discovery regarding financial information sought by the State is clearly relevant to the punitive damages claims in this case, and Peterson fails to establish good cause for a protective order for that information.

One of the seven factors for a jury to consider in evaluating punitive damages under Oklahoma law is "[t]he financial *condition* of the defendant." See 23 Okla. Stat. § 9.1 (emphasis added). This Court has repeatedly held that discovery regarding a defendant's financial condition and net worth is appropriate when a claim for punitive damages has been made. As noted in the State's Motion [DKT # 1869], in the *City of Tulsa* case, this Court held that "[i]t would appear that *financial statements* reflecting the Defendants' net worth from 1996 forward would be sufficient for the Plaintiffs' needs. . . . This order is without prejudice to Plaintiffs' re-urging the motion *should additional financial information be necessary* as the case progresses."

The full financial statements that the State has repeatedly requested, including information on income and cash flow, and the notes that are "integral" to the financial statements, are clearly relevant evidence regarding Peterson's financial condition, a key element in the punitive damages analysis. Moreover, recent tax returns are also relevant to this analysis in that they are the data used and relied upon to prepare the financial statements and contain additional information that demonstrate how certain debt obligations are treated among related

entities and also contain information about how smaller private entities, such as Peterson, distribute profits.

While Peterson acknowledges that its corporate structure has changed, it ignores completely the effect that this change may have had on its financial condition. *See* DKT #1878, at p. 3 (“Peterson is a privately owned, family run business located in northwest Arkansas which was founded in 1939, and *until recently*, was an ‘integrated’ poultry company . . .”) (emphasis added). The reality is that Peterson sold its live poultry operations to Defendant Simmons Foods in 2008, which substantially changed its financial condition, but to date, it has been unable to produce any financial information that demonstrates the implications of this significant change upon its financial condition. Moreover, Peterson further ignores the current economic climate, which has taught us all that financial condition may not best be determined by a snapshot on a single day of a company’s net worth. The State acknowledges that in healthier economic times and where companies have not sold off major portions of their operations, Courts have required a more limited production of financial information. However, these two factors require that the State be provided with additional information to render a more complete evaluation of financial condition.

It is also important to note that while Peterson produced balance sheets in response to the State’s request, those balance sheets appear to have been redacted. *See* Peterson Balance Sheets (to be provided for *in camera* review at March 2, 2008 hearing). The State’s Counsel contacted Peterson regarding this missing information on December 4, 2008. *See* Exhibit A (e-mail chain between Liza Ward and Philip Hixon). To date, no information regarding these redactions have been produced to the State. By failing to produce unredacted balance sheets, Peterson has failed to fulfill its discovery obligations.

Peterson further claims that the State's motion is untimely. Anticipating that Defendants would take the commonly held position that a plaintiff is not entitled to financial information until punitive damages are at issue in the case, and recognizing that the financial condition of companies changes over time, the State determined the most prudent course of action was to pursue financial information when it was time to prepare for the damages expert deadline. Had the State asked for this information a year earlier, Defendants inevitably would have argued even more strongly that the request was premature, and the State would have had to then pursue updated information again late in 2008. Indeed, Peterson acknowledges in its response to the State's Motion to Compel Peterson Farms, Inc. to Respond to Discovery Seeking Financial Information [DKT #1878], that its 2008 balance sheet has not yet been prepared and not available for production.¹ *See* Response, FN 1. Given these variables, the State approached Defendants about this outstanding discovery in October 2008 in anticipation of the January 2009 expert damages deadline. Strikingly, Peterson ignores the fact that the State attempted to obtain this information months before its expert deadline. Even more striking is that Peterson also ignores the fact that discovery has not closed in this case. Had Peterson provided this relevant financial information in October, there would be no issue as to whether supplemental reports are

¹ Contrary to the representations made by Peterson about the proposed agreement pertaining to Peterson's 2008 financial information, the State did respond in a telephone conversation regarding its concerns about the agreement proposed by Peterson regarding Peterson's 2008 financial information (which apparently is still not prepared despite Peterson's representation that it would be available in mid-January). *See* Ex. C. The reason the State rejected the proposal for an agreement and an extension pertaining to this information is because Peterson was only willing to reach an agreement if the State would agree that it would not pursue other financial information the State believed it was entitled to discover. *See* Response, Ex. B at #3. Peterson fails to mention that prior to its proposal, State proposed to counsel for Peterson a straightforward agreement, that upon the production of the 2008 financial information in mid-January 2009, the State could supplement its report with this information. This was rejected by Peterson which instead proposed an unrealistic agreement with conditions that would require the State to agree to no longer seek discovery of other relevant financial information. The State expressed its concerns about this agreement, and Peterson never responded to those concerns.

appropriate. Obviously, the State had hoped that the materials sought by counsel would have arrived sooner and that they would have been complete. But they were not, and counsel has been nonresponsive since that time.

Finally, Peterson has put the cart before the horse by arguing against any supplementation of Mr. Payne's report. First, the instant dispute about the discoverability of the financial information must be addressed. If the Court compels production of additional financial information, then Mr. Payne will have to review that information. Once he reviews the information, *if* he determines that a supplement to his report is appropriate because the information previously provided by Defendants was incomplete or inaccurate, then the State will seek leave from this Court for such a supplement. However, unless or until those steps occur, the State does not know whether seeking leave for a supplement to Mr. Payne's report would be appropriate. Thus, whether or not a supplement from Mr. Payne is appropriate is an issue for another day.

Moreover, whether or not this Court will allow supplementation of Mr. Payne's report, the State is entitled to the information sought in order to rebut any expert designated by Peterson regarding financial condition or to adequately cross examine Peterson's corporate witnesses regarding its financial condition. Mr. Payne is not the only vehicle for presenting evidence of financial condition of any given defendant to a jury.

For the reasons stated herein, the Court should deny Peterson's motion for protection and order Peterson to respond to the State's requests for information pertaining to its financial condition and to provide the specific documents delineated herein.

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